



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

September 14, 2005

Carol Stacy
PO Box 351
Milton Mills, NH 03852-0351

Re: Docket No. AF 04-082 Motion to Accept Settlement Agreement

Dear Ms. Stacy:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Scialfani,
Legal Assistant

cc: Anthony P. Giunta, P.G., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

Carol Stacy
P.O. Box 351
Milton Mills, NH 03852-0351

Re: Millerbrook Market, Milton, NH
UST ID # 0-110574

ADMINISTRATIVE FINE

No. AF 04-082

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Carol Stacy parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Carol Stacy is the registered facility owner of one 5,000-gallon (split 3,000/2,000) gasoline underground storage tank ("UST") at the Millerbrook Market facility ("the Facility"), further identified as UST #0-110574, located on real property at School Street in Milton, NH ("the Property").
3. On September 17, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 05-082 ("the Notice") to Carol Stacy seeking fines totaling \$1,000 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice cited Carol Stacy for violating Env-Wm 1401.11(a) for failing to maintain accurate stock inventory records for both compartments of the UST in accordance with RSA 146-C:5 and Env-Wm 1401.11. For this violation, the Division sought a fine of \$500 per requirement not met or \$1,000 for the Facility, pursuant to Env-C 607.05(a).
5. In order to settle this matter, the Division and Carol Stacy have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
6. Of the proposed fine, in the amount of \$1,000, 20% or \$200 shall be suspended due to this being a one-time unintentional violation. An additional 20% or \$200 shall be suspended due to Carol Stacy's good faith effort to return this facility to compliance. An additional 20% or \$200 shall be suspended due to the Facility's small business status. An additional 20% or \$200 shall be suspended due to Carol Stacy's cooperation in returning the facility into compliance.
7. The suspended portion of the proposed fine, in the amount of \$800 is contingent upon Carol

Stacy maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Carol Stacy fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$800 shall become due and payable immediately. If Carol Stacy maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

8. Carol Stacy agrees to pay the remaining \$200 upon execution of this Agreement.

9. Payment under Paragraph #8 and any payment that becomes due pursuant to Paragraph #7 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

10. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

11. By executing this Agreement, Carol Stacy waives her right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

12. The effective date of this Agreement will be the date on which it is signed by Carol Stacy, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

13. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

8-5-05

Date

COPY
Carol Stacy, Owner

9/12/05

Date

DES Waste Management Division

COPY

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement Agreement is granted this 12th day of September, 2005.

COPY

Michael J. Nolan, Commissioner
Department of Environmental Services